Office-Supreme Court, U.S.
FILED
OCT 19 1982
ALEXANDER L. STEVAS,
CLERK

82-691

No. —

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CLIFFORD PERLMAN AND STUART PERLMAN,
Appellants,

—v.—

ATTORNEY GENERAL OF NEW JERSEY AND
NEW JERSEY CASINO CONTROL COMMISSION,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

PETER M. FISHBEIN*
MICHAEL D. BLECHMAN
Kaye, Scholer, Fierman,
Hays & Handler
425 Park Avenue
New York, New York 10022
(212) 407-8000

Attorneys for Appellants
Clifford and Stuart Perlman

*Counsel of Record

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. __

In the Matter of the Application of

BOARDWALK REGENCY CORPORATION

For a Casino License

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

1. May New Jersey bar appellant Clifford Perlman from any employment any place in the world with any corporation that directly or indirectly owns or operates a gambling casino in New Jersey solely because of his entirely lawful and proper business transactions with a third person who has never been convicted of a crime but is "reputed" to have a business connection with a fourth person who is "a reputed organized crime figure?"

2. May New Jersey similarly bar appellant Stuart Perlman solely because he is Clifford Perlman's brother and their "affairs are inextricably entwined?"

3. Are this Court's holdings that the Federal Due Process Clause prohibits a state from preventing an individual from pursuing his occupation because of guilt by association inapplicable to an industry such as casino gambling because the state characterizes it as "sensitive?"

4. Is New Jersey's casino licensing statute unconstitutionally vague since the state courts have interpreted its requirement that a casino key employee possess "good character" to mean that he must be "sensitive" enough to disavow any relationship with any third person who the state's Casino Control Commission subsequently determines is "a person of unsuitable character and unsuitable reputation," even though that third person has never been convicted of anything?[1]

---

1 The following are the parties to the New Jersey Supreme Court proceeding from which this appeal is taken: Boardwalk Regency Corp.; Caesars World, Inc.; Caesars New Jersey, Inc.; Clifford S. Perlman; Stuart Z. Perlman; Attorney General of New Jersey; New Jersey Casino Control Commission.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	3
1. Proceedings Below	3
2. The Basis for Clifford Perlman's Disqualification	4
3. The Basis for Stuart Perlman's Disqualification	6
THE QUESTIONS PRESENTED ARE SUBSTANTIAL	7
1. The Holding Below, That Legalized Gambling Is A Special, "Sensitive" Industry In Which Normal Constitutional Guarantees Do Not Apply, Undermines Basic Constitutional Safeguards	7
2. The Holding Below, That Even Innocent Associations Can Justify Barring Someone From An Occupation If They Show A Lack Of "Sensitivity," Undermines The Due Process Guarantee Against Guilt By Association Established By This Court's Prior Decisions	8
3. The Holding Below Renders The Standard Of "Good Character" Unconstitutionally Vague By Equating It With "Insensitivity"	10

PAGE

4. The Holding Below Will Have A Serious Impact Not Only On The Perlmans, But On The Public As Well 12

CONCLUSION 13

APPENDIX

Appendix A—Opinion of the Supreme Court of New Jersey 1a

Appendix B—Opinion of the Superior Court of New Jersey, Appellant Division 13a

Appendix C—Opinion of the New Jersey Casino Control Commission 35a

Appendix D—Final Order of the New Jersey Casino Control Commission 109a

Appendix E—Order of the New Jersey Casino Control Commission 113a

Appendix F—Notice of Appeal to the Supreme Court of the United States 117a

Appendix G—N.J. Stat. Ann. § 5:12-89(b)(2) 121a

TABLE OF AUTHORITIES

Cases: PAGE

Aptheker v. *Secretary of State*, 378 U.S. 500 (1964).... 8

Baggett v. *Bullitt*, 377 U.S. 360 (1964) 11

Baird v. *State Bar*, 401 U.S. 1 (1971) 8

Bank of Marin v. *England*, 385 U.S. 99 (1966)..... 12

Garrity v. *New Jersey*, 385 U.S. 493 (1967) 8

Giacco v. *Pennsylvania*, 382 U.S. 399 (1966)..... 10

Ginsberg v. *New York*, 390 U.S. 629 (1968)..... 12

Keyishian v. *Board of Regents*, 385 U.S. 589 (1967) ... 8

Konigsberg v. *State Bar*, 353 U.S. 252 (1957) 8-9, 11

New York Times Co. v. *United States*, 403 U.S. 713 (1971) 7-8

Papachristou v. *Jacksonville*, 405 U.S. 156 (1972) 10-11

Schware v. *Board of Bar Examiners*, 353 U.S. 232 (1957) 8-10

Slochower v. *Board of Higher Education*, 350 U.S. 551 (1956) 9-10

United States v. *Robel*, 389 U.S. 258 (1967) 8

Wieman v. *Updegraff*, 344 U.S. 183 (1953)..... 10

Constitutional Provisions:

U.S. Const. amend. XIV, § 1.....*passim*

Statutes and Regulations:

28 U.S.C. § 1257(2) 1

N.J. Stat. Ann. § 5:12-89(b)(2) (West Supp. 1982-1983) 1, 2

N.J. Admin. Code § 19:41-8.8 (Supp. 1980) 2, 3

OPINION BELOW

The opinion of the Supreme Court of New Jersey is reported at 90 N.J. 361, 447 A.2d 1335 (1982) and is included in the appendix at (App. A, 1a-12a).[2] Although that court concluded that "it is beyond question that the final adjudication of the issues is a matter of considerable importance to the casino industry as well as the general public," (*id.* at 5a), it affirmed appellants' disbarment from the casino business by adopting the opinion below without any further analysis of the constitutional issues. Hence, the opinion of the Superior Court of New Jersey, Appellate Division, reported at 180 N.J. Super. 324, 434 A.2d 1111 (App. Div. 1981), is also included in the appendix at (App. B, 13a-34a). The opinion of the New Jersey Casino Control Commission is unreported and is included in the appendix at (App. C, 35a-108a).

JURISDICTION

This is an appeal from a decision of the New Jersey Supreme Court upholding New Jersey's Casino Control Act, N.J. Stat. Ann. § 5:12-89(b)(2) (App. G, 121a) against a challenge that it violates the due process clause of the Fourteenth Amendment both facially and as applied to appellants. The date of the judgment sought to be reviewed, *i.e.*, the decision of the New Jersey Supreme Court, is July 21, 1982. A notice of appeal to this Court was duly filed on October 18, 1982, in the Supreme Court of New Jersey. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

---

2 References to the Appendix, which is bound separately, are given in the following form: Page 1 of the Appendix is referred to as "(App. A, 1a)," etc.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> nor shall any State deprive any person of life, liberty, or property, without due process of law.

The New Jersey Casino Control Act, N.J. Stat. Ann. § 5:12-89(b)(2) (West Supp. 1982-1983), provides in pertinent part:

> Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity.

This subsection is appended in its entirety at (App. G, 121a).

N.J. Admin. Code § 19:41-8.8 (Supp. 1980), entitled "Reapplication by natural person after denial or revocation," provides in relevant part:

> (a) Any natural person required to be licensed, qualified or approved under the provisions of the Act or regulations of the Commission whose licensure, qualification, or approval is either denied or revoked by the Commission on the basis of that person's failure to satisfy the affirmative qualification criteria of the Act, or due to a Commission finding that such person is disqualified under the criteria of Section 86 of the Act, or both, may not, except as otherwise provided in subsections (b), (f) and (g) of this section, reapply for licensure, qualification or approval until five years have elapsed from the date of said denial or revocation.

STATEMENT OF THE CASE

1. Proceedings Below

Appellants Clifford and Stuart Perlman were substantial shareholders, directors and officers of Caesars World, Inc. ("CWI"), a company which through subsidiaries owns and operates gambling casinos in Nevada and Atlantic City, New Jersey. The Perlmans were forced to sever all ties with CWI and effectively barred from any involvement with any company engaged in the casino business in New Jersey for at least five years by virtue of the decision of the New Jersey Casino Control Commission which, as affirmed by the New Jersey Supreme Court, is the subject of this appeal. Acting on an application for a casino license submitted by Broadway Regency Corporation ("BRC"), a subsidiary of Caesars New Jersey, Inc. ("CNJ"), which in turn is a subsidiary of CWI, the Commission concluded that Clifford and Stuart Perlman, as key employees of BRC, had not proven by clear and convincing evidence that they possessed the "good character, honesty and integrity demanded by the Casino Control Act." (App. B, 15a.) The Commission accordingly ruled that BRC's application would be granted only on the condition that the Perlmans dispose of all their stock, and remove themselves from all positions as officers, directors or employees, of CWI, CNJ, BRC or any other subsidiary of CWI in any jurisdiction. (*Id.* at 15a-16a.) By virtue of N.J. Admin. Code § 19:41-8.8 (Supp. 1980), a regulation issued by the Commission limiting the right of natural persons to reapply for a license after licensure has been denied, the Perlmans are barred for a period of five years from seeking licensure, qualification or approval under New Jersey's Casino Control Act.

The Perlmans appealed this ruling to the Superior Court of New Jersey, Appellate Division, raising, *inter alia*, the questions sought to be reviewed on this appeal. The Appellate Division affirmed the Commission's order with the sole modification that the Perlmans were permitted to retain their

positions with CWI's non-gaming subsidiaries outside of New Jersey. (App. B, 33a-34a.) The New Jersey Supreme Court, relying on the Appellate Division's opinion, then affirmed the decision below, except that it reinstated that portion of the original Commission order which barred the Perlmans from participating even in CWI's non-gaming subsidiaries outside of New Jersey. (App. A, 1a-12a.) Thus the decision on appeal totally bars the Perlmans for at least five years from any involvement with any company which itself or through subsidiaries or affiliates engages in casino gambling in New Jersey.

2. The Basis for Clifford Perlman's Disqualification

The reasons why the Commission's decision was sustained in the New Jersey courts are explained in the opinion of the Appellate Division which, as noted above, was relied upon by the New Jersey Supreme Court. As set forth in that opinion, the conclusion that Clifford Perlman did not possess the "good character, honesty and integrity" required for a casino license is based on his association with one Alvin I. Malnik. (App. B, 19a-20a.) Malnik, however, has never been convicted of any crime or found by any tribunal to have violated any law. (*Id.* at 19a.) The crucial conclusion that he is not a fit person for Clifford Perlman to have associated with is based on the "media identification of an alleged business connection between Malnik and Meyer Lansky, a reputed organized crime figure," the fact that "Federal law enforcement agencies apparently believed Malnik was involved in organized crime" and the fact that Malnik was once indicted—but *not* convicted—for tax fraud. (*Id.*) The Commission concluded that Clifford Perlman's association with Malnik warranted the denial of a casino license despite a mass of testimony given by members of the business and banking communities, among others, that both Clifford and Stuart Perlman were men of good character, honesty and integrity. (*Id.* at 21a.)

The only association between Clifford Perlman and Malnik relied on by the New Jersey courts were three wholy legal and proper business ventures which Clifford Perlman engaged in

personally with Malnik and other investors or which CWI entered into with Malnik. (App. B, 19a-22a.) The New Jersey courts acknowledged there was nothing unlawful or unethical about the business transactions themselves, but held that they justified denying Clifford Perlman a casino license because they showed his "insensitivety" in entering into and continuing an association with someone with Malnik's "reputation." (*Id.* at 31a-34a.) Further, in sustaining the Commission's ruling, the New Jersey courts assumed that "the impugned associations were either unknowing or innocent." (*Id.* at 24a.) Nevertheless, those courts held that such associations justified the denial of a license since they showed an "insensitivity" by the Perlmans "to the potential impact of [their] associations upon the industry . . . ." (*Id.*)

The rationale for the New Jersey courts' decision is set forth as follows in the Appellate Division opinion:

> As we have indicated above, it is abundantly clear to us from the opinion of the Commission that the Perlmans were not rejected because of any "guilt" on their part in the criminal or quasi-criminal sense or because of their association with persons, some of whom, if not guilty, were almost universally thought to be. Rather, they were rejected, among other things, because, as we said above, of their apparent continuing *insensitivity* to the potential impact of those associations in this *sensitive* industry. (*Id.* at 32a) (emphasis added).

While the New Jersey courts did not clearly articulate what they meant by the "sensitivity" of the casino industry and the "insensitivity" of the Perlmans, they apparently concluded that the Perlmans should have known that even a wholly legal and innocent association with someone who had never been found to have done anything wrong, but who was "reputed" to be involved with organized crime, would cast aspersions on an industry where the state felt it important that there be no appearance of impropriety. The indisputable effect of this rationale, of course, was to punish Clifford Perlman—not

because of anything he did or even that Malnik did—but solely because of his business ventures with, and rumors and innuendoes with respect to, Malnik. The New Jersey courts thus held that Clifford Perlman could be denied a casino license on the basis of an innocent, lawful and ethical association with someone who was merely "thought" to have had a business connection with an alleged "unsavory" character. *See (id.* at 19a-20a, 32a-34a.) This is "guilt by association" with a vengeance, although the New Jersey courts tried to clothe it in the rubric of "sensitivity." But, the court's "sensitivity" rationale is nothing more than a holding that Clifford Perlman could be barred from his occupation—even though his character and integrity were beyond reproach—because he associated with someone who, although not convicted of anything, was deemed by the Commission to be unfit.

3. The Basis for Stuart Perlman's Disqualification

Stuart Perlman is not even claimed to have had an association with Malnik. He was denied a casino license solely because of his association with his brother Clifford. Thus, on this point, the opinion below holds that

> we are in hearty agreement with the conclusion of the Commission: "Stuart and Clifford Perlman are more than just brothers." We are persuaded, as was the Commission, that the affairs of the brothers are inextricably entwined. (*Id.* at 20a.)

In other words, Stuart Perlman's close association with his own brother was held to be sufficient, by itself, to demonstrate the kind of "insensitivity" which, under the decision below, warrants the denial of a license.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

1. The Holding Below, That Legalized Gambling Is A Special, "Sensitive" Industry In Which Normal Constitutional Guarantees Do Not Apply, Undermines Basic Constitutional Safeguards

If this case involved any industry other than legalized gambling, it is doubtful that the New Jersey courts would have given their sanction to barring someone from his principal occupation based solely upon his association with another person. Surely they would not have countenanced such a result where, as here, the association was wholly lawful and innocent and the other person was himself not convicted or found by any tribunal to have committed any wrongdoing. And it is unthinkable that they would have tolerated a disqualification based on an individual's perfectly lawful and ethical business and social relationships with his own brother.

The only explanation for the anomalous result in this case is the rationale, found throughout the decisions below, that there are certain fields, including legalized gambling, that are so "sensitive" that the normal constitutional protections simply do not apply.[3] This notion, which is tantamount to declaring constitutional "free fire zones" in which governmental power can be wielded without restraint, is not only without legal foundation, it is subversive of the fundamental concept of constitutional guarantees. While it is true that preventing the infiltration of casinos by organized crime is an important public policy objective, virtually every attempt by government to do something that oversteps the bounds of constitutional restraint has been made in the name of some equally compelling objective. *See, e.g., New York Times Co.* v. *United States*,

---

3 Thus, for example, the Appellate Division's opinion compares legalized gambling with liquor, a "subject apart" in which "[t]he legislative power to regulate . . . has been said to be almost without limit"; and horse racing where "close regulatory supervision" is justified. (App. B, 24a.)

sions that effectively ended the threat of such government action in the future. But the decision below undercuts these precedents and raises the spectre of "guilt by association" under the guise of "sensitivity." If allowed to stand, it would permit *Schware* and *Konigsberg* to be circumvented in virtually every case simply by claiming that the associations objected to, or an applicant's refusal to publicly denounce them, reflect a lack of "sensitivity" to the needs of a particular industry or profession. It is painfully clear that the only reason why the Perlmans were denied licenses was Clifford's association with Malnik and Stuart's association with Clifford. The only basis in the decision below for distinguishing this from "guilt by association" was that the license was not denied because of the associations as such, but because they show the Perlmans' "apparent continuing insensitivity to the potential impact of those associations in this sensitive industry." (App. B, 32a.)

Thus in *Schware* and *Konigsberg*, prior membership in the Communist Party was held not to be a constitutionally sufficient reason to find that an applicant lacked "good moral character" and was therefore unfit to be a member of the bar. 353 U.S. at 246; 353 U.S. at 266-68. Under the decision below, the opposite result could be achieved by claiming that the prior associations reflected a lack of "sensitivity" to the peculiarly sensitive needs of the legal profession—including, for example, the need for maintaining public confidence in lawyers.[4]

The same is true with respect to the further holding in *Schware* that the plaintiff in that case could not be denied

---

4 The contrast between *Konigsberg* and the present case is particularly striking. In *Konigsberg* this Court concluded with the observation that

> [a] lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the commission's actions. 353 U.S. at 273-74.

In the present case, in contrast, a reputation for good character, honesty and integrity acquired by the Perlmans over a lifetime and testified to by business and banking leaders, among others, was worth nothing in the face of an admittedly innocent association on the part of one of the brothers with a person who had not even been proven to have done anything wrong.

admittance to the bar based on past arrests. This Court noted that

> The mere fact that a man has been arrested has very little, if any, probative value in showing that he is engaged in any misconduct. 353 U.S. at 241.

Yet, under the decision below—which disqualified Clifford Perlman for associating with someone who had been indicted but never convicted—a person could presumably be denied a license merely for associating with someone who had been arrested.

Similarly, in *Slochower* v. *Board of Higher Education*, 350 U.S. 551, 558-59 (1956), this Court held a state statute unconstitutional where it in effect required the discharge of any state employee who asserted the privilege against self-incrimination. Yet, under the decision below, someone could be denied a license for associating with someone who had taken the Fifth Amendment if such action were deemed to reflect a lack of "sensitivity" for the needs of the industry.

Likewise, in *Wieman* v. *Updegraff*, 344 U.S. 183, 191 (1953), which held that a state could not bar someone from public employment because he was a member of the Communist Party, this Court stated that "[i]ndiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." Yet the decision below specifically rejects this constitutionally required distinction between innocent and knowing activity.

3. The Holding Below Renders The Standard Of "Good Character" Unconstitutionally Vague By Equating It With "Insensitivity"

This Court has held that "a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits while it leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." *Giacco* v. *Pennsylvania*, 382 U.S. 399, 402-03 (1966). *See Papachristou* v. *Jacksonville*,

405 U.S. 156, 162 (1972); *Baggett* v. *Bullitt*, 377 U.S. 360, 367 (1964). The concept of "insensitivity" invoked by the New Jersey courts comes within this constitutional proscription. Since even innocent associations with persons who have not been shown to have done anything wrong—indeed, even a close association with one's own brother—have been held in this case to justify a finding of "insensitivity," it is difficult to imagine how anyone could know in advance what kind of conduct is prohibited. And the concept of "insensitivity" is so inherently subjective, it would allow judges and juries—and casino control commissions—virtually untrammeled discretion to take any action they wanted in a particular case.

What is more, the New Jersey courts have taken this unconstitutionally vague standard of "insensitivity" and equated it with "good character"—a phrase which is used not only in New Jersey's Casino Control Act but in countless other licensing statutes of all kinds all over the country. Thus, the constitutional error in the decision below is one which, if uncorrected, will infect all areas in which the "good character" standard is utilized.

In *Konigsberg*, 353 U.S. at 263, this Court noted that even the term "good moral character"

> can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

The decision below, by equating a lack of "good character" with "insensitivity," now stretches the "good character" standard to the point where it imposes virtually no limits on the power of the New Jersey Casino Control Commission or any other government officials administering similar statutes to deny access to licensed occupations. Such unrestrained power, which literally invites arbitrary and discriminatory decision-making, is antithetical to the basic principles of due process.

4. The Holding Below Will Have A Serious Impact Not Only On The Perlmans, But On The Public As Well

The decision below has done, and continues to do, great damage to the Perlmans. They have been forced to sever all their ties with CWI, a company they led and owned a major part of. They are also barred from being licensed as key casino employees in New Jersey for at least the next five years—a substantial disability for two people whose principal occupation is in the gaming business in light of the leading position which Atlantic City occupies as one of the country's major casino gambling centers. Indeed, they are prohibited from holding any significant position anywhere in the world with any company which directly or through subsidiaries or affiliates owns or operates a casino in Atlantic City.[5]

However, the insidious effects of the decision below go far beyond the Perlmans. It gives licensing agencies and government officials a new warrant to establish "guilt by association"

---

5 At the time of the Commission's ruling, CWI's subsidiary, BRC, which was operating a casino in Atlantic City under a temporary license, had already invested some $125 million, hired some 4,000 employees, and received building permits and numerous state licenses. Since CWI could not risk forfeiture of this tremendous investment, it has required the Perlmans to comply with the Commission's order and terminate all of their connections with CWI. This cannot moot the appeal since reversal of the decision below would leave the Perlmans free to negotiate a renewed involvement with CWI. *See, e.g.*, Bank of Marin v. England, 385 U.S. 99 (1966) (payment of judgment did not render case moot where collateral effects, such as potential liability for contribution, remain). Further, such a reversal would terminate the five-year bar and enable the Perlmans to seek employment with other companies that operate or contemplate operating casinos in Atlantic City. Since all significant United States casino gambling companies either have or are contemplating operations in Atlantic City, and casino gambling is both Perlmans' principal occupation, the five-year bar substantially inhibits them from pursuing their principal occupation anywhere in the United States. Thus there can be no question of mootness of the appeal. *See, e.g.*, Ginsberg v. New York, 390 U.S. 629 (1968) (suspension of sentence did not render case moot where conviction could cause petitioner to lose luncheonette license).

4. The Holding Below Will Have A Serious Impact Not Only On The Perlmans, But On The Public As Well

The decision below has done, and continues to do, great damage to the Perlmans. They have been forced to sever all their ties with CWI, a company they led and owned a major part of. They are also barred from being licensed as key casino employees in New Jersey for at least the next five years—a substantial disability for two people whose principal occupation is in the gaming business in light of the leading position which Atlantic City occupies as one of the country's major casino gambling centers. Indeed, they are prohibited from holding any significant position anywhere in the world with any company which directly or through subsidiaries or affiliates owns or operates a casino in Atlantic City.[5]

However, the insidious effects of the decision below go far beyond the Perlmans. It gives licensing agencies and government officials a new warrant to establish "guilt by association"

---

5 At the time of the Commission's ruling, CWI's subsidiary, BRC, which was operating a casino in Atlantic City under a temporary license, had already invested some $125 million, hired some 4,000 employees, and received building permits and numerous state licenses. Since CWI could not risk forfeiture of this tremendous investment, it has required the Perlmans to comply with the Commission's order and terminate all of their connections with CWI. This cannot moot the appeal since reversal of the decision below would leave the Perlmans free to negotiate a renewed involvement with CWI. *See, e.g.*, Bank of Marin v. England, 385 U.S. 99 (1966) (payment of judgment did not render case moot where collateral effects, such as potential liability for contribution, remain). Further, such a reversal would terminate the five-year bar and enable the Perlmans to seek employment with other companies that operate or contemplate operating casinos in Atlantic City. Since all significant United States casino gambling companies either have or are contemplating operations in Atlantic City, and casino gambling is both Perlmans' principal occupation, the five-year bar substantially inhibits them from pursuing their principal occupation anywhere in the United States. Thus there can be no question of mootness of the appeal. *See, e.g.*, Ginsberg v. New York, 390 U.S. 629 (1968) (suspension of sentence did not render case moot where conviction could cause petitioner to lose luncheonette license).

and punish or exclude on the basis of their dislike for a person's associates without any proof that those associates did anything wrong. It sanctions vague and undefinable standards such as "insensitivity" which allow officials to decide after-the-fact, on an ad hoc basis and without fair warning what conduct they will deem sufficient to exclude a person from a business or profession. And, perhaps most dangerously, it encourages state governments to suspend or subvert constitutional protections in any area in which they deem "sensitive" regulation to be desirable.

CONCLUSION

For the reasons stated above, probable jurisdiction should be noted.

Respectfully submitted,

PETER M. FISHBEIN*
MICHAEL D. BLECHMAN
Kaye, Scholer, Fierman,
Hays & Handler
425 Park Avenue
New York, New York 10022
(212) 407-8000

Attorneys for Appellants
Clifford and Stuart Perlman

*Counsel of Record

Dated: October 19, 1982